

MOTION FILED  
OCT 16 1991

(3)  
No. 91-480

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**IN THE  
SUPREME COURT  
OF THE UNITED STATES**

October Term, 1991

CARPENTERS SOUTHERN CALIFORNIA  
ADMINISTRATIVE CORPORATION,

Petitioner,

vs.

EL CAPITAN DEVELOPMENT COMPANY,

Respondent.

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MOTION TO FILE BRIEF AS AMICUS CURIAE;  
BRIEF OF AMICUS CURIAE, CALIFORNIA  
IRONWORKERS FIELD PENSION TRUST,  
CALIFORNIA IRONWORKERS FIELD WELFARE PLAN,  
CALIFORNIA IRONWORKERS FIELD VACATION  
TRUST FUND, CALIFORNIA FIELD IRONWORKERS  
APPRENTICESHIP TRAINING AND JOURNEYMAN  
RETRAINING TRUST, CALIFORNIA FIELD  
IRONWORKERS ANNUITY TRUST FUND, AND  
CALIFORNIA IRONWORKERS FIELD  
ADMINISTRATIVE TRUST IN SUPPORT OF  
PETITION OF CARPENTERS SOUTHERN  
CALIFORNIA ADMINISTRATIVE CORPORATION FOR  
A WRIT OF CERTIORARI TO THE  
CALIFORNIA SUPREME COURT

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vs.

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MOTION OF THE CALIFORNIA IRONWORKERS  
FIELD PENSION TRUST, CALIFORNIA IRON-  
WORKERS FIELD WELFARE PLAN, CALIFORNIA  
IRONWORKERS FIELD VACATION TRUST FUND,  
CALIFORNIA FIELD IRONWORKERS APPREN-  
TICESHIP TRAINING AND JOURNEYMAN  
RETRAINING TRUST, CALIFORNIA FIELD  
IRONWORKERS ANNUITY TRUST FUND, AND  
CALIFORNIA IRONWORKERS FIELD ADMINI-  
STRATIVE TRUST TO FILE BRIEF AS  
AMICUS CURIAE

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE  
JUSTICES OF THE SUPREME COURT OF THE UNITED  
STATES:

California Ironworkers Field Pension Trust, California Ironworkers Field Welfare Plan, California Ironworkers Field Vacation Trust Fund, California Field Ironworkers Apprenticeship Training and Journeyman Retraining Trust, California Field Ironworkers Annuity Trust Fund, and California Ironworkers Field Administrative Trust ("Iron Workers Trusts") hereby move the Court, pursuant to Supreme Court Rule 37.2, for leave to file the accompanying brief as amicus curiae in support of the Petition for Writ of Certiorari filed on September 16, 1991 in USSC No. 91-480.

In support of the motion, the Iron Workers Trusts state as follows:

1. This motion is necessitated by the failure, upon request, of Respondent El Capitan Development Company, to give written consent to the filing of a brief



by the amicus applicant herein. Petitioner Carpenters Southern California Administrative Corporation, which administers the Carpenters Trust Funds ("Carpenters Trusts") has consented to the filing of the accompanying brief.

2. The Iron Workers Trusts, like the Carpenters Trusts, are employee benefit plans governed by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sections 1001, et seq. ("ERISA").

3. The Iron Workers Trusts have about 10,000 participants working in a three state area. Hours reported are about 970,000 hrs./month over the last 12 month period and the fringe package is \$11.18 an hour. There are 947 employers who presently report to the trusts in a three state area.

4. The question to be argued in the brief is as follows: Does ERISA

Section 514 [29 U.S.C. Section 1144] preempt California Civil Code Section 3111?

5. The Iron Workers Trusts have relied upon California Civil Code Section 3111 as a traditional state law mechanic's lien remedy for recovery of delinquent employer contributions in numerous cases involving substantial sums of money. At the time of the decision in the present case, the Iron Workers Trusts had seven unsatisfied mechanic's liens which totalled \$213,042.17. At one time in 1989, the Iron Workers Trusts were pursuing 83 separate job findings on a single employer and as a result of Civil Code Section 3111, all job findings were recovered.

6. The Iron Workers Trusts share a common and ongoing interest with the Carpenters Trusts in the viability and use of Civil Code Section 3111 as a state law

means of collecting delinquent employer contributions. The Iron Workers Trusts contend, like the Carpenters Trusts, that Civil Code Section 3111 is not preempted by ERISA, for the reasons stated in the accompanying brief as amicus curiae.

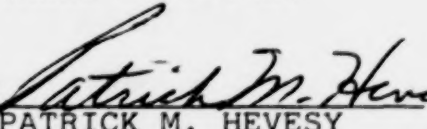
7. The amicus is in a unique position to advise the Court because it is also the appellant in another case before the Ninth Circuit, entitled M. C. Sturgis, et al. v. Herman Miller, Inc., et al., No. 90-15054, which involves the same issue as to whether Civil Code Section 3111 is preempted by ERISA. The amicus has filed a petition for rehearing in the Ninth Circuit case and is awaiting a ruling on that petition.

WHEREFORE, it is respectfully moved  
and requested that the Iron Workers Trusts  
be granted leave to file the accompanying  
brief as amicus curiae.

DATED: October 14, 1991

Respectfully submitted,

PETER W. CAVETTE  
PATRICK M. HEVESY

By   
PATRICK M. HEVESY  
Attorneys for  
Amicus Curiae

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BRIEF OF AMICUS CURIAE  
CALIFORNIA IRONWORKERS FIELD PENSION  
TRUST, CALIFORNIA IRONWORKERS FIELD  
WELFARE PLAN, CALIFORNIA IRONWORKERS  
FIELD VACATION TRUST FUND, CALIFORNIA  
FIELD IRONWORKERS APPRENTICESHIP  
TRAINING AND JOURNEYMAN RETRAINING  
TRUST, CALIFORNIA FIELD IRONWORKERS  
ANNUITY TRUST FUND, AND CALIFORNIA  
IRONWORKERS FIELD ADMINISTRATIVE  
TRUST IN SUPPORT OF PETITION FOR A  
WRIT OF CERTIORARI TO THE CALIFORNIA  
SUPREME COURT

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BRIEF OF AMICUS CURIAE

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

California Ironworkers Field Pension Trust, California Ironworkers Field Welfare Plan, California Ironworkers Field Vacation Trust Fund, California Field Ironworkers Apprenticeship Training and Journeyman Retraining Trust, California Field Ironworkers Annuity Trust Fund, and California Ironworkers Field Administrative Trust, amici curiae herein, respectfully urge the granting of the petition for a writ of certiorari filed on September 16, 1991, in order to review the judgment of the Supreme Court of the State of California entered in this case on June 20, 1991.

## INTERESTS OF THE AMICI CURIAE

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Each of the parties appearing as amici curiae ("Iron Workers Trusts") is an employee benefit plan governed by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sections 1001, et seq. ("ERISA"). In this and other respects, the Iron Workers Trusts share common circumstances and interests with petitioner Carpenters Southern California Administrative Corporation, which administers the Carpenters Trust Funds ("Carpenters Trusts"). The Iron Workers Trusts have relied upon California Civil Code Section 3111 as a traditional state law mechanic's lien remedy for recover of delinquent employer contributions in numerous cases involving substantial sums of money. In 1989, the Iron Workers Trusts pursued 83



separate job findings on a single employer and as a result of Civil Code Section 3111, all job findings were recovered.

#### STATEMENT OF THE ISSUE

Does ERISA Section 514 [29 U.S.C. Section 1144] preempt California Civil Code Section 3111, which provides employee benefit plans a traditional mechanic's lien against real property as a remedy for collection of unpaid employee fringe benefit contributions incurred in improving the property?

#### ARGUMENT

THE STATUTORY MECHANIC'S LIEN  
REMEDIES AFFORDED TRUST FUNDS  
UNDER CIVIL CODE SECTION 3111  
ARE NOT PREEMPTED BY ERISA.

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The state mechanic's lien remedies afforded ERISA trust funds are not affected by the preemption clause contained in ERISA

Section 514(a) [29 U.S.C. Section 1144(a)]. ERISA preempts "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan . . ." 29 U.S.C. Section 1144(a). The California mechanic's lien remedies set forth in Civil Code Section 3111 do not "relate to" a plan within the meaning of that section. Hence, ERISA does not preempt those state remedies.

Courts have recognized four types of state laws which "relate to" a plan and are thereby preempted by ERISA:

- (1) laws regulating the type of benefits or terms of ERISA plans;
- (2) laws that create reporting, disclosure, funding, or vesting requirements for ERISA plans;
- (3) laws that provide rules for the calculation of the amount of benefits to be paid under ERISA plans; and

(4) laws and common-law rules that provide remedies for misconduct growing out of the administration of an ERISA plan.

Martori Bros. Distributors v. James-Massengale, 781 F.2d 1349, 1356-1358 (9th Cir.), cert. denied, 107 S.Ct. 435 (1986).

The state mechanic's lien law found in Civil Code Section 3111 does not fall under any of the four categories of state laws enumerated in Martori. It does not regulate the type of benefits or terms of plans, nor does it create reporting, disclosure, funding, or vesting requirements for those plans. It does not provide rules for the calculation of benefits, nor does it provide remedies for misconduct in the administration of a plan. Civil Code Section 3111 simply provides a collection remedy for Trust Funds to recover contributions due from a delinquent employer. As

it does not fall under those types of laws which "relate to" benefit plans, it is not preempted by ERISA.

Although relied upon by the Court in its decision, Mackey v. Lanier Collection Agency & Service, Inc., 486 U.S. 825, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988) does not support the preemption of the mechanic's lien remedies afforded Trust Funds under Civil Code Section 3111. In Mackey, the U.S. Supreme Court held that a Georgia statute barring garnishment of ERISA-covered welfare plans under state law garnishment procedures was preempted. The Court looked to the fact that the statute gave ERISA plans different treatment under Georgia garnishment procedures than that afforded non-ERISA plans (see Mackey, 100 L.Ed.2d at p. 844). California Civil Code Section 3111, by contrast, does not afford

ERISA trust funds any different treatment than any other party entitled to invoke the mechanic's lien remedy under California law. Hence, the factors which led to preemption of the state anti-garnishment statute in Mackey do not exist in regard to Civil Code Section 3111 in this case. Mackey further held that Georgia's general garnishment statute, which did not single out ERISA plans for special treatment, was not preempted by ERISA (see Mackey, 100 L.Ed.2d at p. 845). Civil Code Section 3111, which similarly does not give ERISA plans any different treatment than others authorized to utilize the lien remedy, falls within the same category of laws as Georgia's general garnishment statute, and is therefore not preempted. Hence, under either the four-part test for preemption set forth in Martori, or under the factors enunciated

in Mackey, Civil Code Section 3111 is not preempted by ERISA.

ERISA does afford Trust Funds an in personam remedy to collect contributions from the delinquent employer. (ERISA Sections 515, 502(g)(2) [29 U.S.C. Sections 1145, 1132(g)(2)]). That remedy, however, is not to the exclusion of any state in rem remedies afforded Trust Funds to collect those same contributions. Section 515 creates a statutory requirement that an employer participating in an employee benefit plan should pay contributions owed according to the terms of agreement, and creates an ERISA cause of action against the employer (in personam) if the statute is violated. By contrast, Civil Code Section 3111 creates a lien against property (in rem) improved by the work of the employee in the amount of delinquent contributions.

The rights an employee benefit plan may have against a third party property owner under state law are not directly implicated by Section 515, nor by the provisions of ERISA Section 502(g)(2) which assist the enforcement of Section 515. Congress gave no indication of an intent to destroy all rights of employee benefit plans against third parties in exchange for creating an ERISA cause of action against the delinquent employer alone. The ERISA action against the employer is, in many cases, inadequate, as Trust Funds have no method under ERISA of checking the credit worthiness of signatory employers. Trust Funds are often left holding a paper judgment against employers who have gone out of business or simply left the area, especially since the employers are often domiciled outside of the states serviced by the Trust Funds. Congress

clearly did not intend to leave Trust Funds without effective state in rem remedies for collecting these contributions. Under the statutory scheme of ERISA, Civil Code Section 3111 is still a viable remedy for the collection of delinquent employer contributions.

#### CONCLUSION

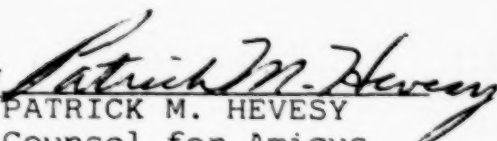
ERISA Trust Funds have frequently utilized state lien remedies to collect contributions for their beneficiaries who performed work on the lien property. The delinquent employer may not always be a viable source for collecting these contributions. As Civil Code Section 3111, which affords ERISA Trust Funds these lien remedies, is not preempted by ERISA, the Iron Workers Trusts pray that the writ of certiorari be granted.



DATED: October 14, 1991

Respectfully submitted,

PETER W. CAVETTE  
PATRICK M. HEVESY

By   
PATRICK M. HEVESY  
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